Nos. [redacted]-704

33436

IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. [redacted]1950

HANS ACKERMANN, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

FRIEDA ACKERMANN, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR WRITS OF CERTIORARI TO COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

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PRESS OF VON BOECKMANN-JONES CO., AUSTIN, TEXAS

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AUTHORITIES

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PETITION FOR WRITS OF CERTIORARI

To the Honorable Supreme Court of the United States:

Your petitioners, Hans Ackermann and Frieda Ackermann, pray for writs of certiorari to the Court of Appeals for the Fifth Circuit to bring up for review here the judgments of said court affirming the action of the trial court in denying petitioners' motions to be relieved from judgments entered in these cases denaturalizing these petitioners.

SUMMARY STATEMENT OF THE MATTER INVOLVED

These proceedings against petitioners herein and a proceeding against Max Keilbar, brother of petitioner Frieda Ackermann, were commenced, in separate actions, by respondent, hereinafter called the Government, to obtain their denaturalization, all of them being naturalized citizens. The cases were consolidated for trial purposes, and judgments were entered against petitioners and Keilbar on December 7, 1943, denaturalizing each of them, one opinion of the court covering all three cases. *United States v. Ackermann* (two cases), *same v. Keilbar,* 53 F. Supp. 611. Keilbar appealed to the Court of Appeals, Fifth Circuit, and it reversed his case on its merits. *Keilbar v. United States,* 144 F. (2d) 866. Petitioners did not appeal, but on March 25, 1948, they filed in their cases motions to be relieved from said judgments, in which motions they make allegations which they claim show a reason justifying relief from the operation of said judgments and assert that the court has power under Rule 60 (b), (6), Rules of Civil Procedure for District Courts, to grant such relief. The Government filed motions that petitioners' said motions be dismissed on the ground that they do "not state grounds sufficient to invoke the authority of the Court to set aside" the judgments theretofore entered in these cases. Thereupon the trial court heard the *Government's* said motions and, *without any hearing of any kind other than said hearing and without permitting the introduction of any testimony or other evidence,* entered orders denying *petitioners'* motions for relief on the ground "that there is no merit to said motion and that same should be denied." Petitioners appealed from said orders, and the Court

of Appeals, in a two-to-one decision, affirmed the action of the trial court, with Judge Hutcheson dissenting.

BASIS OF JURISDICTION

The jurisdiction of the Supreme Court is invoked under Section 1254, Subsection (1), of Title 28, United States Code, and Supreme Court Rule 38 (5) (b).

The date of the entry of the final judgment of the Court of Appeals in each of these cases and the date on which that court filed its opinion in each of them was December 29, 1949. No motion for rehearing was filed in that court and this petition for writs of certiorari is being filed in the Supreme Court within ninety days after said date as provided in Section 2101, Subsection (c), United States Code.

QUESTIONS PRESENTED

(1) Does the court have power under Rule 60 (b), (6), to grant petitioners relief from the operation of the judgments denaturalizing them?

(2) Is relief under Rule 60 (b) authorized in this case, it being a case where the relief sought is predicated upon reasons which prevented an appeal?

(3) Do petitioners' motions for relief from the judgments denaturalizing them allege a reason justifying relief from the operation of said judgments?

(4) Is petitioners' remedy by motion for relief from judgment barred by laches?

(5) Did the the courts below depart from the accepted and usual course of judicial proceedings when they passed on the merits of the matter presented by

petitioners' motions for relief when such matter was not before them for decision?

REASONS FOR ALLOWANCE OF WRITS

(1) In disposing of these cases, the court below held with respect to the meaning and applicability of Rule 60 (b) in conflict with an applicable decision of the Supreme Court, to-wit, this court's decision in *Klapprott v. United States,* 335 U. S. 601, in that the Supreme Court held in that case, at page 615, that said rule "vests power in courts adequate to enable them to vacate judgments *whenever such action is appropriate to accomplish justice* (emphasis supplied), while the Court of Appeals held in these cases, Transcript of Record, *Hans Ackermann* case, page 38, that the ruling by the Supreme Court in the *Klapprott* case is not applicable in a case where the relief sought is "predicated upon reasons which it is claimed prevented an appeal." Furthermore, as shown in the brief annexed hereto, there are other respects in which the courts below, in disposing of these cases, held in conflict with this court's holdings in the *Klapprott* case. Also see the dissenting opinion of Judge Hutcheson in these cases. Transcript of Record, *Hans Ackermann* case, pages 41 and 42.

(2) If the Court of Appeals is correct in its holding that the trial court passed on the merits of the matter presented by petitioners' motions for relief, then the trial court departed from the accepted and usual course of judicial proceedings, and the Court of Appeals "so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision," in that the only question before the lower court for decision was the question presented by the Government's motions to dismiss

petitioners' motions for relief from the judgments denaturalizing them, the sole question presented for decision being whether or not petitioners' motions "state grounds sufficient to invoke the authority of the Court to set aside the judgment heretofore entered in this cause," and passing on the merits of the matter presented by petitioners' motions was a departure from the accepted and usual course of judicial proceedings. Again see Judge Hutcheson's dissenting opinion in these cases, citing *Clay v. Callaway*, 177 F. (2d) 741, 743.

PRAYER

Wherefore, petitioners pray that this honorable court allow this petition for certiorari and grant the writs of certiorari directed to the Court of Appeals for the Fifth Circuit to bring up the records in these cases here to review the judgments of the District Court for the Western District of Texas and the judgments affirming the same entered by the Court of Appeals for the Fifth Circuit.

GRIMES & OWEN, Taylor, Texas
Attorneys for Petitioners

By _____
Of Counsel

IN THE

Supreme Court of the United States

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BRIEF SUPPORTING PETITION FOR CERTIORARI

OPINIONS BELOW

Other than as set out in the orders appealed from, there was no written opinion in the trial court. The opinion of the Court of Appeals, Fifth Circuit, has been officially reported. *Ackermann v. United States*, 178 F. (2d) 983.

JURISDICTION

The judgment was entered and the opinion was filed in each of these cases by the Court of Appeals on December 29, 1949, and the petition for writs of certiorari and this brief are being filed in the Supreme Court within ninety days after said date. The jurisdiction of this court is invoked under Section 1254, Subsection (1), of Title 28, United States Code, and Supreme Court Rule 38 (5) (b).

STATEMENT

These proceedings, although separate cases, were presented, argued and disposed of together in the courts below on the stipulation that the pleadings, motions, orders and so forth would be identical (R(H) 31).[1] They were commenced by the filing by respondent, hereinafter called the Government, of complaints seeking the denaturalization of petitioners (R(H) 1-6). After a lengthy trial judgments denaturalizing them were entered on December 7, 1943 (R(H) 16-17). *United States v. Ackermann*, 53 F. Supp. 611. Petitioners did not appeal from said judgments, but on March 25, 1948, they filed in said cases duly verified motions (the same in both cases except as to name of movant and number of cause) for relief from said judgments, such motion in the *Hans Ackermann* case, omitting caption, signature of counsel and verification, reading as follows:

[1]The records in these cases are separate, but practically all record references will be to the record in the *Hans Ackermann* case since the record in the *Frieda Ackermann* case is abbreviated. References to the Hans Ackermann record will be indicated R(H) and those to the Frieda Ackermann record will be indicated R(F).

"To the Said Honorable Court:

"Hans Ackermann, defendant, invoking the jurisdiction of this court under Rule 60, Rules of Civil Procedure for District Courts, respectfully prays that the court set aside and hold for naught the final judgment entered herein on December 7, 1943, cancelling and setting aside the order of this court admitting defendant to citizenship in the United States of America, cancelling the certificate of naturalization theretofore issued to defendant, directing defendant to surrender said certificate of naturalization to the clerk of this court, and restraining and enjoining this defendant from claiming any right, privilege, benefit or advantage whatsoever under said certificate of naturalization, and for grounds would respectfully show the court that relief from the operation of said judgment is justified and it is no longer equitable that said judgment should have prospective application for the following reasons:

I.

"That on the same day said judgment was entered against this defendant a similar judgment was entered against defendant's wife, Frieda Ackermann, in Civil Action No. 150 in this court; that defendant's failure to appeal from said judgment is excusable for the following reasons: At the time said judgment was entered defendant did not have any money or property other than a home at Taylor, Texas, owned by him and his wife. Said home was then worth not exceeding $2,500.00, and the costs of transcribing the evidence and printing the record and brief on appeal were estimated at not less than $5,000.00. Almost immediately after said judgment was entered, to-wit, on December 11, 1943, defendant and his wife were arrested as being potentially dangerous to the public peace and

safety of the United States and placed under detention in Alien Detention Station, Seagoville, Texas. Prior to the expiration of the time within which defendant could have perfected an appeal from said judgment, he was advised by his attorney that he and his wife could not appeal from said judgments on affidavits of inability to pay costs of appeal or give security therefor unless they first appropriated said home to the payment of such costs to the full extent of the proceeds of a sale thereof. Such information greatly distressed defendant and his wife and they sought advice from an officer of the United States of America then located at said detention station, such officer being W. F. Kelley, Assistant Commissioner for Alien Control, Immigration and Naturalization Department, defendant and his wife, then being in the custody of said officer and he being a person in whom they had great confidence. Said Kelley being informed with respect to the financial condition of defendant and his wife and being informed with respect to the advice of their attorney that it would be necessary for them to dispose of their home in order to appeal from said judgments, advised them in substance to 'hang onto their home,' and in reply to their questions with respect to what their status would be after termination of the war between the United States and Germany, told them that they had lost their American citizenship but had not reacquired their German citizenship, that they were stateless, and would be released at the end of the war. Defendant and his wife relied on such assurance from said Kelley and by reason of reliance thereon refrained from appealing from said judgments.

II.

"That after the time within which defendant and his wife could have appealed from said judg-

ments, the Attorney General of the United States issued orders that defendant and his wife be interned, such order as to each of them being dated April 29, 1944; that by orders dated January 15, 1946, the Attorney General ordered, that in the event defendant and his wife failed to depart from the United States within thirty days from the date they were notified of said orders, the Commissioner of Immigration and Naturalization was directed to provide for their removal to Germany; that under pertinent Presidential Proclamations and certain regulations defendant and his wife were entitled to be released for thirty days in order that they might have an opportunity to leave the United States; that there was a delay in granting them such thirty-day period, and during such delay they instituted habeas corpus proceedings for the purpose of effecting their release from internment; that they have never been accorded a hearing in conformity with the requirement of the Fifth Amendment to the Constitution of the United States that no person shall be deprived of his liberty without due process of law; that the Attorney General determined the propriety of their internment, and such determination was based upon hearings for which they were not furnished with charges against them, at which they were denied the right to be represented by counsel, were not confronted by witnesses against them, and were not afforded the opportunity to cross-examine witnesses against them, the Attorney General having made the charges, heard the evidence, if any, passed upon the sufficiency thereof and judged the matter, and no proceeding against them having ever been instituted in any court of the United States to determine the propriety of their internment, and defendant and his wife so alleged in said habeas corpus proceedings; that the person who had custody of defendant and his wife contested the granting of the writs of habeas corpus prayed

for in said proceedings, asserting that defendant and his wife were not entitled to a hearing in conformity with said requirement of the Fifth Amendment to the Constitution because their status is that of alien enemies; that said orders directing the removal of defendant and his wife to Germany were predicated upon the fact that their status is that of alien enemies and that they were interned; that defendant and his wife are now on parole under the supervision of the Immigration and Naturalization Service and subject to the conditions and requirements of the orders granting them such paroles; that said orders directing their removal to Germany have never been set aside or cancelled; that defendant's said deprivation of his liberty and his said impending removal to Germany are the result of and made possible by the judgment herein.

III.

"That said judgment has no valid foundation in law or in fact, being based upon erroneous conceptions of applicable law and the evidence being insufficient to support the conclusions of ultimate facts and of law on which the court based the decision herein; that defendant proposes to substantiate the last preceding allegation by producing at the hearing on this motion all material evidence adduced at the trial of this case, and cite pertinent authorities including, among others, the cases of *Baumgartner v. United States*, 322 U. S. 694, 64 S. Ct. 1240, and *Meyer v. United States* (C.C.A. 5), 141 F. (2d) 825; that defendant verily believes and alleges as a fact that if he had appealed from said judgment it would have been reversed with instructions to dismiss the complaint on its merits; that Civil Action No. 133 in this court, Austin Division, was the case of United States v. Max Hermann Keilbar, and was a companion case with this

case and the above-mentioned action against defendant's wife, Frieda Ackermann; that said three cases were consolidated for trial purposes and the evidence was in all substantial respects exactly the same in each case; that said Keilbar appealed his case to the United States Circuit Court of Appeals for the Fifth Circuit, and while said appeal was pending, the United States of America, acting by and through the United States Attorney for the Western District of Texas, under the authority of the Attorney General of the United States, stipulated in said appellate court as follows: 'That the evidence in this case is insufficient to support the conclusions of ultimate facts and of law of the court below and that judgment of this Court be entered reversing the judgment of the United States District Court for the Western District of Texas, Austin Division thereof, in Cause Number 133 Civil, entitled United States of America versus Max Hermann Keilbar, and remanding same to the trial court with instructions to dismiss the complaint on its merits.'

IV.

"That defendant's failure to appeal from the judgment herein is excusable for the reasons alleged above and it is inequitable and unjust that the judgment herein should have prospective application; and that relief from the operation of said judgment is justified by the facts alleged above in this motion.

"Wherefore defendant prays that the Court set aside and hold for naught said final judgment entered herein on December 7, 1943, and that the complaint herein be dismissed on its merits." (R(H) 18-23)

Thereafter the Government filed in each case a motion which, omitting caption and signature of counsel, reads as follows:

"Now comes the United States of America acting by and through its attorney, the United States Attorney for the Western District of Texas, and moves the Court to dismiss the 'Defendant's Motion to be Relieved from Final Judgment' heretofore filed in the above entitled and numbered cause, and for grounds would show the Court that said Motion of Defendant *does not state grounds sufficient to invoke the authority of the Court* to set aside the judgment heretofore entered in this cause." (Emphasis supplied) (R(H) 22 and 31)

The Government did not file any denial or pleading of any kind other than the above quoted motion to dismiss.

Omitting the caption, date line and the judge's signature, the judgment appealed from in each of these cases reads as follows:

"The Court, having considered Defendant's Motion to be Relieved from Final Judgment filed herein on March 30, 1948, is of the opinion that there is no merit to said motion and that the same should be denied.

"It Is, Therefore, Ordered that said motion be, and the same is hereby, denied." (R(H) 24-25 and 31)

After said orders were entered, counsel for the Government and counsel for petitioners, with the signed approval of the trial judge, signed and filed certain stipulations (R(H) 31-34), and Section II thereof reads as follows:

"On March 25, 1948, the defendants, respectively, filed in these cases, respectively, a pleading designated 'Defendant's Motion to be Relieved from Final Judgment.' On March 30, 1948, plaintiff filed in each of said cases a motion designated

'Respondent's Motion to Dismiss "Defendant's Motion to be Relieved from Final Judgment,"' which motion in each of said cases was heard and taken under consideration by the Court on June 14, 1948. No action was taken by the Court on plaintiff's said motions prior to September 28, 1948, on which date he entered in each of said cases an order designated 'Order Denying Defendant's Motion to be Relieved from Final Judgment,' which orders erroneously recited that defendants' said motions were filed on March 30, 1948, while, in fact, they were filed on March 25, 1948. Said orders were entered by the Court *without any hearing of any kind other than the above-mentioned hearing on plaintiff's said motions* designed 'Respondent's Motion to Dismiss, "Defendants Motion to be Relieved from Final Judgment,"' *and the Court did not any time permit the introduction of any testimony or other evidence.* However, on his own volition, the Court read evidence in the transcript of the record in the above-mentioned Keilbar case which contains all of the evidence in these cases and copies of which are on file in the Keilbar appeal, No. 11,140, Circuit Court of Appeals, Fifth Circuit." (Emphasis supplied) (R(H) 32)

On appeal the Court of Appeals for the Fifth Circuit, with Judge Hutcheson dissenting, affirmed the action of the trial court, *Ackermann v. United States*, 178 F. (2d) 983.

SPECIFICATION OF ERRORS RELIED UPON

(1) The trial court erred in denying, without a hearing on their merits, petitioners' motions for relief from the judgments denaturalizing them, and the Court of Appeals erred in sustaining such action of the trial court.

(2) The Court of Appeals erred in holding that,

because the relief sought in these cases is predicated upon reasons which it is claimed prevented an appeal, relief under Rule 60 (b), Rules of Civil Procedure for District Courts,[2] is not authorized in these cases.

(3) The trial court erred in holding that there is no merit to petitioners' said motions, and the Court of Appeals erred in sustaining such holding.

(4) The Court of Appeals erred in holding, inferentially, that petitioners' remedy by motion for relief from the judgments denaturalizing them is barred by laches.

(5) If the Court of Appeals is correct in its holding that the trial court passed on the merits of the matter presented by petitioners' motions for relief, then, the merits of such matter not being before him

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[2]Subsection (b) of Rule 60 reads as follows:

"(b) Mistakes: Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59 (b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. * * *"

for decision, the trial court departed from the accepted and usual course of judicial proceedings and thereby erred, and the Court of Appeals erred in sanctioning same and doing likewise.

SUBHEADS OF ARGUMENT AND POINTS ARGUED

(1) The court has power under and is authorized by Rule 60 (b) to grant petitioners relief from the judgments denaturalizing them, if such relief is appropriate to accomplish justice.

(2) The undenied, verified allegations in petitioners' motions are sufficient to show that granting petitioners relief from the judgments denaturalizing them is appropriate to accomplish justice.

(3) Petitioners' remedy by motion for relief from judgment is not barred by laches.

(4) If the trial court passed on the merits of the matter presented by petitioners' motions for relief, he departed from the accepted and usual course of judicial proceedings, and the action of the Court of Appeals in sanctioning same calls for exercise of the Supreme Court's power of supervision.

ARGUMENT

(1)

The court has power and is authorized by Rule 60 (b) to grant petitioners relief from the judgments denaturalizing them, if such relief is appropriate to accomplish justice. (Germane to first and second questions presented (Pet. 3) and first and second errors, supra 14-15.)

Decision of the questions involved in these peti-

tions requires construction and application of Rule 60 (b). The orders appealed from were entered on September 28, 1948. Since then, to-wit, on January 17, 1949, the Supreme Court, in the case of *Klapprott v. United States,* 335 U. S. 601, modified April 4, 1949, 336 U. S. 942, has construed and applied said rule. In that case a judgment denaturalizing Klapprott, the defendant, had been entered. More than four years thereafter he filed a verified motion seeking the setting aside of the judgment. It was contended by the Government that his motion showed nothing more than "excusable neglect," which is a reason for relief from a judgment specified in subsection (1) of Rule 60 (b), and a motion presenting said reason is required by said rule to be made not more than one year after the judgment was entered. In disposing of this question the Supreme Court held that Klapprott's motion showed a reason which comes under subsection (6) of said rule, the "other reason" clause, and said:

> "It is contended that the 'other reason' clause should be interpreted so as to deny relief except under circumstances sufficient to have authorized relief under the common law writs of *coram nobis* and *audita querela,* and that the facts shown here would not have justified relief under these common law proceedings. One thing wrong with this contention is that few courts ever have agreed as to what circumstances would justify relief under these old remedies. To accept this contention would therefore introduce needless confusion in the administration of 60 (b) and would also circumscribe it within needless and uncertain boundaries. Furthermore 60 (b) strongly indicates on its face that courts no longer are to be hemmed in by the uncertain boundaries of these and other common law remedial tools. In

> simple English, the language of the 'other reason' clause, for all reasons except the five particularly specified, vests power in courts adequate to enable them to vacate judgments *whenever such action is appropriate to accomplish justice.*" (Emphasis supplied)

But, in these cases, the Court of Appeals held that relief under Rule 60 (b) is not authorized in these cases because the relief sought in these cases is predicated upon reasons which it is claimed prevented an appeal, basing such holding on its holding that "the right of appeal" from a judgment where there was a "full, adversary, proceeding conducted in the same manner as is all such litigation in the Federal Courts" is "no part of due process." Petitioners respectfully submit that such holding is directly in conflict with the holding by the Supreme Court in the *Klapprott* case, supra, that the "other reason" clause of Rule 60 (b), "for all reasons except the five particularly specified, vests power in courts adequate to enable them to vacate judgments *whenever* such action is appropriate to accomplish justice." (Emphasis supplied.) There is no language in Rule 60 (b) which limits the application of its "other reason" clause to judgments in cases where due process has been denied.

The Court of Appeals cites the case of *United States v. Kunz,* 163 F. (2d) 344, as supporting its disposition of these cases. Petitioners respectfully submit that the *Kunz* case is no more a precedent for the disposition of these cases than is the decision by the Court of Appeals, Third Circuit, in the *Klapprott* case (*Klapprott v. United States,* 166 F. (2d) 273), and the latter decision was reversed by the Supreme Court as a result of application of Rule

60 (b) as it now exists (*Klapprott v. United States*, 335 U. S. 601) while the *Kunz* case was finally terminated before that rule, as it now exists, became effective. Both of those Court of Appeals decisions were based on the applications of rules *theretofore* established for opening up judgments. In the *Kunz* case, the court clearly shows that its decision was based on its conclusion that Kunz had not alleged facts which brought him within the old common law and equitable remedies available for reopening litigation where the time for appeal has passed, particularly the rule which permits the reopening of a judgment where errors of law are apparent on the face of the record, and in the *Klapprott* case, the Court of Appeals applied those old rules, enumerating them in the opinion at Page 277 (166 F. (2d)).

In short, in aplying the decision in the *Kunz* case as a precedent in these cases, the Court of Appeals, in effect, applied the same rules in these cases as the Government contended the Supreme Court should apply in the *Klapprott* case. In disposing of such contention in the *Klapprott* case, the Supreme Court used the language quoted at pages 17-18 of this brief.

(2)

The undenied, verified allegations in petitioners' motions are sufficient to show that granting petitioners relief from the judgments denaturalizing them is appropriate to accomplish justice. (Germane to first, second and third questions presented (Pet. 3) and first, second and third errors, supra 14-15.)

Petitioners' motions were duly verified (R(H) 23 and 31, supra 7) and the allegations therein were not denied by the Government; therefore, all of peti-

tioners' allegations must be accepted as true. *Klapprott v. United States,* supra. On the basis of these allegations it is obvious that the granting of petitioners' motions to be relieved from the judgments denaturalizing them is not only appropriate to accomplish justice but essential to accomplishing same.

So far as justice is concerned, the vital allegations in petitioners' motions are that the judgments denaturalizing them are based upon conclusions of fact which are not supported by the evidence and that they will be deported if they are not relieved from said judgments. The first of these all important allegations is supported by the further allegations that these cases and the case of Max H. Keilbar were companion cases; that they were consolidated for trial purposes and "the evidence was in all substantial respects exactly the same in each case"; that Keilbar appealed his case to the Court of Appeals, Fifth Circuit, and while said appeal was pending, the Government stipulated in that court as follows: "That the evidence in this case is insufficient to support the conclusions of ultimate facts and of law of the court below and that judgment of this court be entered reversing the judgment of the United States District Court for the Western District of Texas, Austin Division thereof, in Cause Number 133 Civil, entitled United States of America versus Max Hermann Keilbar, and remanding same to the trial court with instructions to dismiss the complaint on its merits." In other words, the undenied and verified motions of petitioners allege the same essential fact as the Government stipulated in the Court of Appeals in the *Keilbar* case, to-wit, that the evidence in these cases is insufficient to support the

conclusions of ultimate facts and of law of the trial court.

The allegations in petitioners' motions clearly show that they will be deported if they are not relieved from the judgments denaturalizing them. "To deport one who so claims to be a citizen obviously deprives him of liberty * * *. It may result also in loss of both property and life, or of all that makes life worth living." *Ng Fung Ho v. White,* 259 U. S. 276, 284.

Since justice was accomplished in the *Max Keilbar* case by reversing the judgment denaturalizing him and dismissing the complaint on its merits, it is evident under petitioners' allegations that justice will be accomplished in the cases at bar by relieving petitioners from the judgments denaturalizing them.

Since petitioners' allegations show, at least by implication, sufficient justification for their failure to appeal, they are entitled to have the evidence reconsidered, and granting them the privilege of having same reconsidered can not work any injustice upon the Government, because such evidence has been preserved and is still available, as shown by the stipulation in the record herein to the effect that the record in the *Keilbar* case "contains all of the evidence in these cases and copies of which are on file in the Keilbar appeal, No. 11,140, Circuit Court of Appeals, Fifth Circuit" (R(H) 32, supra 14).

The analysis by the Court of Appeals of petitioners' allegations presenting their reason for not appealing from the judgments denaturalizing them clearly shows that it entirely overlooked the inference fairly to be drawn from the circumstances narrated in said motion, to-wit, the psychological effect of such circumstances upon petitioners.

The first section of the motion alleges petitioners' distressing realization that they could not appeal from the denaturalization judgments without appropriating their home for that purpose and facts showing that while they were under the influence of this great mental depression, and at a time the Government was holding them in custody, one of its agents gave them misleading advice and assurances which caused them to refrain from appealing from said judgments. (R(H) 18-19, supra 8-9).

In the case of *Klapprott v. United States,* 335 U. S. 601, the original majority decision was that since the Government in effect demurred to Klapprott's complaint and did not deny his allegations the psychological issue should be determined by the Supreme Court in his favor. Mr. Justice Frankfurter was of the opinion that the case should have been remanded for the purpose of permitting the trial court to determine such psychological issue. Otherwise he concurred in the original majority opinion, and by reason of modification (336 U. S. 942) of the original decision, his opinion wholly concurs with the final decision. In his opinion he said, beginning at page 630 (335 U. S.):

> "Rule 60 (b) now provides five grounds for relief from default judgments and a sixth catch-all ground, 'any other reason justifying relief from the operation of the judgment.' The only one of the first five reasons to which Klapprott's conduct, as explicitly narrated, may plausibly be assigned is that of 'excusable neglect,' relief from which must be obtained within a year after a default judgment. But I think that if the inferences fairly to be drawn from the circumstances narrated by Klapprott were found to be true, they would take his case

outside of the characterization of 'neglect,' because 'neglect' in the context of its subject matter carries the idea of negligence and not merely of non-action, and would constitute a different reason 'justifying relief from the operation of the judgment.' When a claim for citizenship is at stake, we ought to read a complaint with a liberality that is the antithesis of Baron Parke's 'almost superstitious reverence for the dark technicalities of special pleading.' See 15 Dict. Nat. Biog. 226. *Therefore, what fairly emanates from such a complaint should be treated as though formally alleged.* And so I would not deny Klapprott an opportunity, even at this late stage, to establish as a psychological fact what his allegations imply, namely that the harassing criminal proceedings against him had so preoccupied his mind that he was not guilty of negligence in failing to do more than he initially did in seeking to defend the denaturalization proceeding. But I would not regard such a psychological issue est blished as a fact merely because the Government in effect demurred to his complaint. Since the nature of the ultimate issue — forfeiture of citizenship — is not to be governed by the ordinary rules of default judgments, neither should the claim of a state of mind be taken as proved simply because the Government, feeling itself justified in resting on a purely legal defense, did not deny the existence of that state of mind.

"To rule out the opportunity to establish the psychological implications of the complaint would be to make its denial a rule of law. It would not take much of the trial court's time to allow Klapprott to establish them if he can. The time would be well spent even if he should fail to do so; it would be more consonant with the safeguards which this Court has properly thrown around the withdrawal of citizenship than

is the summary disposition that was made. But I would require Klapprott to satisfy the trial judge that what he impliedly alleges is true, and it is here that I part company with the majority." (Emphasis supplied)

The trial court did not give these petitioners an opportunity to prove their allegations, those expressed or those implied. Application of the "other reason" clause of Rule 60 (b) will result in giving them such opportunity.

Certainly it can not be successfully contended that it would not be appropriate to accomplish justice to vacate a denaturalization judgment which is not based on sufficient evidence when such judgment, if permitted to stand, would result in the deportation of the person denaturalized by same. The allegations in petitioners' motions are to the effect that their denaturalization judgments were not supported by the evidence and that they will be deported if such judgments are not set aside (R(H) 20-22, supra 9 to 12). Such allegations must be taken as true in these appeals.

(3)

Petitioners' remedy by motion for relief from judgment is not barred by laches. (Germane to fourth question presented (Pet. 3) and fourth error, supra 15.)

At least by inference, the Court of Appeals held that petitioners' remedy by motion for relief from judgment is barred by laches. Petitioners submit that the *Klapprott* case is directly in point and disposes of the laches question contrary to the apparent disposition of it made by the Court of Appeals. The District Court dismissed Klapprott's motion on the

ground that he had been guilty of laches in delaying more than four years in making an effort to have his denaturalization case reopened. That court's action was affirmed by the Court of Appeals, one of the two affirming judges resting his decision on laches. The Supreme Court reversed both lower courts and remanded the case to the District Court.

Klapprott's denaturalization judgment was entered July 17, 1942, and his motion to vacate the judgment was filed December 12, 1946, four years, four months and twenty-five days after the judgment was entered (*Klapprott v. United States*, 335 U. S. 601, 605-607). These petitioners' denaturalization judgments were entered December 7, 1943, and their motions to vacate these judgments were filed March 25, 1948, four years, three months and eighteen days after the judgments were entered.

Unsuccessful court action was prosecuted on behalf of Klapprott to enjoin the Attorney General from deporting him under an order made possible by his denaturalization judgment, certiorari being denied by the Supreme Court on December 9, 1946, three days *before* his motion to vacate his denaturalization judgment was filed (*Klapprott v. United States*, 335 U. S. 601, 606). Unsuccessful court action was prosecuted by these petitioners to effect their relase from internment and thereby defeat orders directing their deportation (*United States, ex rel. Ackermann v. J. L. O'Rourke, Officer in Charge etc.*, two cases, 164 F. 2d 95), certiorari being denied by the Supreme Court June 21, 1948, (*United States, ex rel. Ackermann v. J. L. O'Rourke, Officer in Charge etc.*, two cases, 334 U. S. 858), nearly three months *after* their motions to vacate their denaturalization judgments were filed.

Thus it will be seen that less time elapsed between the entering of petitioners' denaturalization judgments and the filing of their motions to vacate them than elapsed between the entering of Klapprott's denaturalization judgment and the filing of his motion to vacate it; and his motion to vacate his denaturaliztion judgment was filed *after* final termination of the action to forestall his deportation, while these petitioners' motions to vacate their denaturalization judgments were filed *before* final termination of their actions to forestall their deportation.

Furthermore, no benefit as a result of Klapprott's said motion was available to him until Rule 60 (b), as it now exists, became effective. It became effective March 19, 1948, (*Klapprott v. United States*, 335 U. S. 601, 608), and these petitioners filed their said motions March 25, 1948. Certainly this was prompt action on their part, and they now ask that they be given the benefit of said rule as it now exists.

(4)

If the trial court passed on the merits of the matter presented by petitioners' motions for relief, he departed from the accepted and usual course of judicial proceedings, and the action of the Court of Appeals in sanctioning same calls for exercise of the Supreme Court's power of supervision. (Germane to fifth question presented (Pet. 3-4) and fifth error, supra 15.)

Petitioners respectfully submit that the record conclusively shows that the trial court's disposition of petitioners' motions was based solely on his conclusion that there is "no merit" to said motions.

On March 25, 1948, petitioners, the defendants in

the trial court, filed their motions to vacate their denaturalization judgments. Thereafter the Government filed in each case a motion for the court to dismiss the petitioners' motion, the only ground stated in such motion to dismiss being that the petitioners' motion "*does not state grounds sufficient to invoke the authority of the Court* to set aside the judgment heretofore entered in this cause." (Emphasis supplied) (R(H) 22 and 31, supra 13).

The Government did not file any denial or pleading of any kind other than said motion to dismiss. Hence, no issue was raised other than the sufficiency of petitioners' motions to invoke the jurisdiction of the court.

Omitting the caption, date line and the judge's signature, the judgment appealed from in each of these cases reads as follows:

> "The Court having considered Defendant's Motion to be Relieved from the Final Judgment filed herein on March 30, 1948, is of the opinion that there is no merit to said motion and that the same should be denied.
>
> "It Is, Therefore, Ordered that said motion be, and the same is hereby, denied." (supra 13)

After said orders were entered, counsel for the Government, the plaintiff in the trial court, and counsel for petitioners, with the signed approval of the trial judge, signed and filed certain stipulations, which included the following:

> "Said orders were entered by the Court without any hearing of any kind other than the above mentioned hearing on plaintiff's said motions designed 'Respondent's Motion to Dismiss, "Defendants Motion to be Relieved from Final Judgment,"' and the Court did not any time

permit the introduction of any testimony or other evidence. However, on his own volition, the Court read evidence in the transcript of the record in the above-mentioned Keilbar case which contains all of the evidence in these cases and copies of which are on file in the Keilbar appeal, No. 11,140, Circuit Court of Appeals, Fifth Circuit." (supra 14)

It conclusively appears from the foregoing that there was nothing before the trial court other than the question of whether or not petitioners' motions were sufficient to invoke the jurisdiction of the court. Therefore, if he passed on the merits of the matter presented by petitioners' motions for relief, he departed from the accepted and usual course of judicial proceedings. However, regardless of whether the trial court committed such error the Court of Appeals did commit such error, and such action of that court calls for exercise of the Supreme Court's power of supervision.

CONCLUSION

It is submitted that the foregoing clearly shows that there are special and important reasons for granting the petition for certiorari, in that the holdings of the courts below are in conflict with the holding by the Supreme Court in the *Klapprott* case and that, at least, the Court of Appeals departed from the accepted and usual course of judicial proceedings, and further shows that in the interests of justice the writs of certiorari should be granted.

All of which is respectfully submitted.

GRIMES & OWEN, Taylor, Texas
Attorneys for Petitioners

By: O M Grimes
Of Counsel

IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. [redacted] 1950

HANS ACKERMANN, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

FRIEDA ACKERMANN, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONERS' REPLY TO BRIEF FOR THE UNITED STATES IN OPPOSITION

GRIMES & OWEN, Taylor, Texas
E. M. GRIMES, Taylor, Texas
Of Counsel
Attorneys for Petitioners

PRESS OF VON BOECKMANN-JONES CO., AUSTIN, TEXAS

IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1949

No. 703

HANS ACKERMANN, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

No. 704

FRIEDA ACKERMANN, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONERS' REPLY TO BRIEF FOR THE UNITED STATES IN OPPOSITION

It is obvious that the authors of the brief in opposition believe that the Government's argument presents two reasons why the petition for writs of certiorari should be denied. The argument presenting the

first of these so-called reasons is based upon the false premise that petitioners' motions for relief from the judgments denaturalizing them were predicated "on the ground that petitioners were unable to appeal the judgments of denaturalization because of their impecunious circumstances" (Bf. for U. S. in Opposition, 9). The argument presenting the other of these so-called reasons is based on the false premise that "the [trial] court did review the transcript of the evidence at the trial before entering its order denying the motion. . . ." (*id.*, 10).

With respect to the false premise first mentioned above, petitioners call attention to the fact that the only reason alleged by them for their failure to appeal from the judgments denaturalizing them is set forth in section I of their motions (No. 703, R. 18-19). In that section they first allege that at the time said judgments were entered they did not have any money or property other than their home, that its value was not over $2,500.00 while the costs of transcribing the evidence and printing the record and brief on appeal were estimated at not less than $5,000.00, and that they were advised by their attorney that they could not appeal in forma pauperis without first appropriating their home to the payment of such costs to the full extent of the proceeds of a sale thereof, and then their other allegations as to why they did not appeal (to quote from No. 703, R. 19) are as follows:

> ". . . . Such information greatly distressed defendant and his wife and they sought advice from an officer of the United States of America then located at said detention station, such officer being W. F. Kelley, Assistant Commissioner for Alien Control, Immigration and Naturalization Department, defendant and his wife then being in the

custody of said officer and he being a person in whom they had great confidence. Said Kelley being informed with respect to the financial condition of defendant and his wife and being informed with respect to the advice of their attorney that it would be necessary for them to dispose of their home in order to appeal from said judgments, advised them in substance to 'hang onto their home,' and in reply to their questions with respect to what their status would be after termination of the war between the United States and Germany, told them that they had lost their American citizenship but had not reacquired their German citizenship, that they were stateless, and would be released at the end of the war. Defendant and his wife relied on such assurance from said Kelley and by reason of reliance thereon refrained from appealing from said judgments." (No. 703, R. 19.)

From the foregoing it is clear that petitioners' motions were not predicated on the ground that they were *unable* to appeal because of their impecunious circumstances but, instead, did not appeal by reason of a psychological fact which was occasioned by misleading advice and assurances given them by an agent of their adversary while they were in his custody, and which misleading advice and assurances caused them to *refrain* from appealing from said judgments.

In the case of *Klapprott v. United States,* 335 U. S. 601, Mr. Justice Frankfurter cogently pointed out the psychological implications involved in that case and said, at page 631: "I would not deny Klapprott an opportunity, even at this late stage, to establish as a psychological fact what his allegations imply. . . ."

With respect to the other false premise mentioned above, petitioners call attention to the Government's

erroneous statement that "the [trial] court . . . . reviewed *the* evidence in the denaturalization proceedings" (emphasis supplied) (Bf. for U. S. in Opposition, 8). The Government cites the record in No. 703, page 32, as a basis for this erroneous statement. The statement thus cited is contained in a stipulation by the parties with the signed approval of the trial judge, which reads as follows:

> ". . . . Said orders were entered by the Court without any hearing of any kind other than the above mentioned hearing on plaintiff's said motions designed 'Respondent's Motion to Dismiss, "Defendants Motion to be Relieved from Final Judgment" ', and the Court did not any time permit the introduction of any testimony or other evidence. However, on his own volition, the Court read evidence in the transcript of the record in the above mentioned Keilbar case which contains all of the evidence in these cases and copies of which are on file in the Keilbar appeal, No. 11,140, Circuit Court of Appeals, Fifth Circuit." (*Id.*, 32.)

It is evident that the Government's argument that "the District Court denied the motions for lack of merit in petitioners' contention that the judgments were erroneous" (Bf. for U. S. in Opposition, 10) is based on its misinterpretation of the above quoted stipulation. The trial court[1] did not read *all* the evidence in the record in the Keilbar case, and the stipulation was not intended to convey the impression that he did so. The error in the above quoted statement by the Government is the inclusion therein of the empha-

[1] The trial judge before whom the denaturalization cases were originally tried was Judge Keeling (No. 703, R. 16-17), but prior to the filing of the motions involved here he was succeeded by Judge Rice (*id.*, 34).

sized word "*the*". In view of the Government's argument this error is a very material error in that it changes the meaning of the stipulation. As actually written, signed, filed and printed (No. 703, R. 32), the stipulation means that the court read a part of the evidence, not all of it, while the meaning of the above quoted statement by the Government is that the court read all of the evidence, not just a part of it.

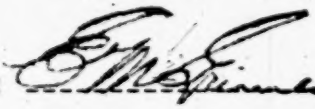
The statement by Judge Hutcheson in his dissenting opinion (No. 703, R. 42), that the trial court held that the grounds stated in petitioners' motions were not sufficient to invoke the authority of the court, is attacked by the Government in the footnote on page 9 of its brief in opposition. Such statement by Judge Hutcheson shows that he recognized the fact that the only question before the trial court was whether or not petitioners' motions stated grounds sufficient to invoke the authority of the court and that the fact that the trial court, on its own motion, read *a part* of the evidence in the Keilbar case had no bearing upon the disposition of the appeals in these cases then pending in the Court of Appeals.

Even if the trial court had, on his own volition, read all the evidence, he would have departed from the accepted and usual course of judicial proceedings if he had disposed of petitioners' motions on their merits since they were not before him for determination on their merits. Such determination of petitioners' motions on their merits would have deprived petitioners of their valuable right to be heard, through counsel, on the merits of their motions; and further they would have been deprived of the valuable right to have a record in *these cases* whereby they could show in the appellate courts the insufficiency of the

evidence to support the denaturalization judgments. Petitioners' motions contemplated that the transcript of the evidence in the Keilbar case would be admitted in evidence in these cases (No. 703, R. 21), and in this connection attention is called to the fact that the trial court "did not any time permit the introduction of any testimony or other evidence" (*id.*, 32).

Respectfully submitted,

GRIMES & OWEN, Taylor, Texas
Attorneys for Petitioners

By: 

Of Counsel

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 35

HANS ACKERMANN, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

No. 36

FRIEDA ACKERMANN, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONERS' STATEMENT AS TO BRIEF AND CONCLUSION RESPECTING DISPOSITION ON MERITS

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for certiorari and brief in support thereof, brief for the United States in opposition, and petitioners' reply to brief for the United States in opposition (causes Nos. 703 and 704, October term, 1949), and since petitioners consider their petition and brief in support thereof and their reply to the brief for the United States in opposition sufficient they elect to stand on them and not file a new brief on the merits.

CONCLUSION

Petitioners respectfully submit that by reason of the errors of the courts below pointed out in the petition for certiorari and brief in support thereof the judgments of the District Court denying petitioners' motions for relief from the original judgments in these cases and the judgments of the Court of Appeals affirming such judgments of the trial court should be reversed and these causes remanded to the District Court for hearings on the merits of said motions, and petitioners pray accordingly.

J. R. OWEN, Taylor, Texas

E. M. GRIMES, Taylor, Texas

By: E M Grimes

Attorneys for Petitioners

In the Supreme Court of the United States

OCTOBER TERM, ~~1949~~ 1950

No. ~~703~~ 35

HANS ACKERMANN, PETITIONER

v.

UNITED STATES OF AMERICA

No. ~~704~~ 36

FRIEDA ACKERMANN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The majority and dissenting opinions in the Court of Appeals (No. 703, R. 36-42; No. 704, R. 12-13) are reported at ~~178~~ F. 2d 983 and 179 F. 2d 236, respectively.

JURISDICTION

The judgments of the Court of Appeals were entered on December 29, 1949 (No. 703, R. 42; No. 704, R. 13). The petition for writs of certiorari was filed on March 27, 1950. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the District Court properly denied as without merit petitioners' motions under Rule 60(b), Federal Rules of Civil Procedure, to vacate judgments of denaturalization which had been entered after trial approximately four and one-half years earlier and from which petitioners took no appeal.

FEDERAL RULE OF CIVIL PROCEDURE INVOLVED

Amended Rule 60(b), effective March 19, 1948, of the Federal Rules of Civil Procedure provides:

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon

which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Section 57 of the Judicial Code, U.S.C., Title 28, § 118, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

STATEMENT

On July 20, 1942, the United States filed identical complaints in the United States District Court for the Western District of Texas, pursuant to Section 338 of the Nationality Act of 1940 (54 Stat. 1137, 1158; 8 U.S.C. 738), to revoke the judgments of that court entered on June 17, 1938, admitting petitioners, husband and wife, to

citizenship and cancel their certificates of naturalization on the ground of fraud in their procurement in that petitioners' oaths of allegiance to the United States and forswearing allegiance to the German Reich were false (No. 703, R. 1-6, 31).[1] Answers were filed denying the allegations of fraud (No. 703, R. 7-10). The cases were consolidated for trial with a similar complaint against Max Herman Keilbar, petitioner Frieda Ackermann's brother, who was naturalized in November 1933, made his home with petitioners, and worked with them as a co-owner with petitioner Hans Ackermann in publishing the Texas Herold, a German language weekly newspaper (*id.*, 11-12; *United States* v. *Ackermann*, 53 F. Supp. 611, 612, 613 (W.D. Tex.)). The court found the allegations of the complaints to be true (No. 703, R. 12-16) and, accordingly, on December 7, 1943, entered judgments setting aside the orders admitting petitioners and Keilbar to citizenship and cancelling their certificates of naturalization (*id.*, 16-17). In an exhaustive opinion filed the same day, the court reviewed the evidence adduced at the consolidated trial and concluded as to each defendant: "From the evidence, which, in my opinion, is clear, unequivocal and

[1] Since these are companion cases and the issues are the same in both, the record in No. 704 incorporates by reference most of the record in No. 703 and it was stipulated that the disposition of the appeal in No. 703 should control in No. 704 (No. 704, R. 1-3).

convincing, I find the allegations of the complaint true." 53 F. Supp. 611, 616.

Although Keilbar appealed, petitioners did not (No. 703, R. 18, 22). On Keilbar's appeal, the Government stipulated that "the evidence in this case is insufficient to support the conclusions of ultimate facts and of law of the Court below" and agreed to a reversal of the judgment of denaturalization with directions to dismiss the complaint on its merits (*id.*, 22). The Court of Appeals for the Fifth Circuit accepted the stipulation and on October 2, 1944, entered judgment accordingly. *Keilbar* v. *United States*, 144 F. 2d 866.[2]

On March 25, 1948, petitioners filed identical motions "invoking the jurisdiction of [the District] Court under Rule 60" of the Federal Rules of Civil Procedure (No. 703, R. 18) and praying that the denaturalization judgments of December 7, 1943, be set aside and that the complaints be dismissed on the merits (*id.*, 18-23). They alleged that the judgments had "no valid foundation in law or in fact, being based upon erroneous conceptions of applicable law and the evidence being

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[2] The files of the Department show that this disposition of Keilbar's case was agreed to after a review of the record in the light of this Court's intervening decision of June 12, 1944, in *Baumgartner* v. *United States*, 322 U.S. 665. As in Baumgartner's case, the evidence the Government relied upon to show falsity in the oath of allegiance related to a period beginning two years or more after Keilbar's naturalization. Compare 53 F. Supp. at 613-615 with 322 U.S. at 668-669, 676-677.

insufficient to support the conclusions of ultimate facts and of law," and they proposed to "substantiate" this allegation "by producing at the hearing on this motion all material evidence adduced at the trial of this case, and cite pertinent authorities including, among others, the cases of *Baumgartner* vs. *United States,* 322 U. S. 694, * * * and *Meyer* vs. *United States,* (C.C.A. 5) 141 F. 2d 825." They also alleged that if the judgments had been appealed they "would have been reversed with instructions to dismiss the complaint[s] on [the] merits", and they referred to the reversal on stipulation in Keilbar's case, alleging that "the evidence was in all substantial respects exactly the same in each case." (*Id.,* 21-22.) In justification of their failure to appeal, they alleged that on December 11, 1943, four days after the entry of the judgments, they were arrested as potentially dangerous enemy aliens and detained at the Alien Detention Station, Seagoville, Texas. They had no money or property other than their home, valued at $2,500, and the costs of transcribing the evidence and printing the record and brief on appeal were estimated at not less than $5,000. Petitioner Hans Aekermann's attorney advised them that they could not appeal in forma pauperis "unless they first appropriated said home to the payment of such costs to the full extent of the proceeds of the sale thereof."[3] This

[3] The attorney who represents petitioners in these proceedings represented petitioner Hans Ackermann and Keilbar in the denaturalization proceedings in the District Court (No. 703, R. 10, 11, 23; No. 704, R. 3) and he also represented

information "greatly distressed" petitioners and they sought advice from the officer in charge of the detention station, who advised them to "hang on to their home" and that they were "stateless" and would be released at the end of the war. On April 29, 1944, after the expiration of the period for appeal, the Attorney General ordered that petitioners be interned, and in January 1946 he ordered them removed to Germany unless they should depart voluntarily within 30 days. When their release for voluntary departure was delayed, they sought unsuccessfully to secure their release on a petition for a writ of habeas corpus attacking the validity of their internment and the orders for their removal.[4] Finally, petitioners alleged that they are now on parole under the supervision of the Immigration and Naturalization Service. (*Id.*, 18-21.)

The Government moved to dismiss petitioners' motions on the ground that they did "not state grounds sufficient to invoke the authority of the Court to set aside the" judgments of denaturalization (No. 703, R. 24). On June 14, 1948, the District Court heard argument on the motions to dis-

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Keilbar on the latter's appeal. See 144 F. 2d 866. Petitioner Frieda Ackermann was represented by other counsel in the earlier proceedings. See 53 F. Supp. 611. The files of the Department show that Keilbar was allowed to proceed on his appeal in forma pauperis. We do not have a copy of the record, but the files indicate that it was not printed. It contained all the evidence introduced at the consolidated trial of the complaints against petitioners and Keilbar (No. 703, R. 32).

[4] See *United States ex rel. Ackermann* v. *O'Rourke*, 164 F. 2d 95 (C.A. 5), certiorari denied, 334 U.S. 858.

miss but no evidence was taken on the allegations of petitioners' motions. However, the court on its own motion reviewed the evidence in the denaturalization proceedings (*id.*, 32) and thereafter, on September 28, 1948, entered the following order in each case: "The Court having considered Defendant's Motion to be Relieved from Final Judgment * * * is of the opinion that there is no merit to said motion and that the same should be denied" (No. 703, R. 24-25; No. 704, R. 3-4).

The Court of Appeals affirmed these orders, holding (1) that the ruling in *Klapprott* v. *United States*, 335 U. S. 601, 336 U. S. 942, that in the special circumstances alleged there the petitioner had stated a basis for relief under Rule 60(b)(6), F. R. Civil P., from a default judgment of denaturalization, does not extend to the situation involved here where the judgment from which relief is sought was entered after a trial on the merits and the motion for relief is predicated on a plea that the unsuccessful party was unable to appeal because of circumstances beyond his control, and (2) that in any event the allegations of insufficiency of the evidence, in the light of subsequent decisions, to support the judgments of denaturalization and of inability to take appeals presented no meritorious ground for vacating those judgments. Hutcheson, C.J., dissenting, thought that the District Court denied petitioners' motions for lack of jurisdiction and that on the authority of the *Klapprott* decision

the cases should be remanded for a hearing on the merits of their claim for relief.

ARGUMENT

As cogently demonstrated by the majority opinion below, the *Klapprott* decision, upon which petitioners rely as supporting the jurisdiction of the District Court to entertain their motions (Pet. 16-19), is inapposite. For conceding, *arguendo*, that there was jurisdiction (but cf. *Sunal* v. *Large*, 332 U. S. 174; *United States* v. *Kunz*, 163 F. 2d 344 (C. A. 2)), it is clear that the District Court, with the concurrence of the Court of Appeals, was correct in denying the motions on the merits.[5]

The motions were predicated solely on the ground that petitioners were unable to appeal the judgments of denaturalization because of their impecunious circumstances and that if they had appealed the judgments would have been reversed. In respect of their allegations of impecuniousness, the District Court knew that Keilbar had appealed, that the same record was common to all three cases,

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[5] We do not understand Judge Hutcheson's view that the District Court held that the "grounds stated in the motion were not sufficient to invoke the authority of the court" (No. 703, R. 42), and we are unable to find in the record this quoted language, which he in turn quoted in his opinion. The Government's motions to dismiss petitioners' motions to be relieved from the judgments of denaturalization were based upon the ground that they did "not state grounds sufficient to invoke the authority of the Court" (No. 703, R. 24), but the District Court did not grant the Government's motions. Instead, it denied petitioners' motions on the express ground that they had "no merit" (*id.*, 24-25).

and that the same attorney represented Keilbar and petitioner Hans Ackermann. There was no allegation in the motions that petitioners sought leave to appeal in forma pauperis, as Keilbar did. And especially in view of the fact that petitioners were represented by counsel of their own choosing, their arrest and internment could not have prevented them from appealing.[6] In these circumstances, the District Court might properly have concluded that petitioners' attempt to excuse their failure to appeal from the allegedly erroneous judgments was insufficient to justify the relief they sought.

The record indicates, however, that the District Court denied the motions for lack of merit in petitioners' contention that the judgments were erroneous. Petitioners offered nothing new in this respect but proposed only that the District Court review the evidence adduced at the consolidated trial in the light of the subsequent decision of this Court in *Baumgartner* v. *United States*, 322 U. S. 665, and the reversal on stipulation in Keilbar's case following the *Baumgartner* decision. The court did review the transcript of the evidence at the trial before entering its order denying the motions more than three months after it heard argument on the Government's motions to dismiss (No. 703, R. 32) and it is therefore evident that the court concluded,

[6] The files of the Department show that Keilbar was also arrested as an alien enemy on December 11, 1943, four days after entry of the judgments of denaturalization, and that he was not released from internment until October 1944, after the Court of Appeals had reversed the judgment against him.

as did the Court of Appeals (*id.*, 39) that, assuming jurisdiction, petitioners' cases were not controlled by *Baumgartner* or the result in Keilbar's case.[7] The courts below were right in this respect for, despite the allegation in petitioners' motions that the evidence in their cases and Keilbar's "was in all substantial respects exactly the same" (*id.*, 22), it is evident from a reading of the District Court's opinion and summary of the evidence following the trial of the consolidated cases (53 F. Supp. 611) that, although some of the proof was common to all the defendants, much of the evidence of acts and utterances relied upon to show falsity in the oaths of allegiance was necessarily different as to each of them. And as the Court of Appeals pointed out (No. 703, R. 39), the vital differentiating factor between Keilbar's case and petitioners' is that there was no evidence as to Keilbar's attitude at the time of his naturalization in 1933, but only evidence of disqualifying views expressed during a period beginning at least two years later. The disposition of his appeal was therefore dictated by the intervening *Baumgartner* decision (see note 2, p. 5, *supra*). In petitioners' cases, on the other hand, to borrow from the opinion in *Knauer* v. *United States*, 328 U. S. 654, 668 (compare 53 F. Supp. at 613-616), "The evidence prior to [their]

[7] Since this was the issue tendered by petitioners' motions, the Court of Appeals correctly held (No. 703, R. 40) that there was no occasion "for any further hearing to determine the merits of [petitioners'] contention." Cf. Pet. 26-28.

naturalization [in 1938], that which clusters around that date, and that which follows in the next few years is completely consistent. It conforms to the same pattern. We do not have to guess whether subsequent to naturalization [they] had a change of heart and threw [themselves] wholeheartedly into a new cause. We have clear, convincing, and solid evidence that at all relevant times [they were] thoroughgoing Nazi[s] bent on sponsoring Hitler's cause here."

CONCLUSION

For the reasons stated, we respectfully submit that the petition for writs of certiorari should be denied.

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OPINIONS BELOW

The opinions in the Court of Appeals (No. 35, R. 22–28; No. 36, R. 5–6) are reported at 178 F. 2d 983 and 179 F. 2d 236.

JURISDICTION

The judgments of the Court of Appeals were entered on December 29, 1949 (No. 35, R. 28;

No. 36, R. 6). The petition for writs of certiorari was filed March 27, 1950, and certiorari was granted May 29, 1950 (No. 35, R. 30; No. 36, R. 8). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

Whether in the circumstances of this case the failure to appeal from final judgments entered after a full adversary trial in which petitioners were represented by counsel may be remedied by motions to vacate the judgments under Rule 60 (b), Federal Rules of Civil Procedure; if so, whether the judgments in question were erroneous.

FEDERAL RULE OF CIVIL PROCEDURE INVOLVED

Rule 60 (b) of the Federal Rules of Civil Procedure, amended as of March 19, 1948, provides:

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59 (b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has

been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Section 57 of the Judicial Code, U. S. C., Title 28, § 118, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

STATEMENT

Petitioners are husband and wife, natives of Germany, who came to the United States and on June 17, 1938, were naturalized here, taking on that date, their statutory oaths of exclusive

allegiance to the United States (No. 35, R. 2, 19–20).[1] On July 20, 1942, the United States filed identical complaints in the United States District Court for the Western District of Texas, pursuant to Section 338 of the Nationality Act of 1940 (54 Stat. 1137, 1158; 8 U. S. C. 738), to revoke the judgments admitting petitioners to citizenship and cancel their certificates of naturalization. The complaints alleged, inter alia, fraud in that petitioners' oaths pledging allegiance to the United States and forswearing allegiance to the German Reich were false. (No. 35, R. 1–5, 20.) These cases were consolidated for trial with a similar complaint in a denaturalization proceeding against Max Herman Keilbar, brother of petitioner, Frieda Ackermann (No. 35, R. 8–9; *United States* v. *Ackermann,* 53 F. Supp. 611, 613 (W. D. Tex.)). Like petitioners, Keilbar was born in Germany but emigrated to the United States at a later date. Here he lived continuously with his sister and brother-in-law. (*United States* v. *Ackermann, supra,* at 613.) He, however, obtained his American citizenship several years before them, on November 17, 1933 (id., at 612). In the denaturalization proceedings Keilbar and petitioner Hans Ackermann were

[1] Nos. 35 and 36 are companion cases with identical issues. The record in No. 36 incorporates by reference most of the record in No. 35 and it was stipulated that the disposition of the appeal in No. 35 should control in No. 36. (No. 36, R. 1–2.)

represented by the same counsel, who now appears for petitioners. Frieda Ackermann had another lawyer. (Id., at 611.) After a lengthy trial and the taking of voluminous testimony the court on December 7, 1943, entered judgments setting aside the orders admitting all three to citizenship and cancelling their certificates of naturalization (No. 35, R. 9–13). On the same day the court filed an opinion which, citing but a small portion of the mass of evidence, concluded, "from the evidence, which, in my opinion, is clear, unequivocal and convincing, I find the allegations of the complaint true." 53 F. Supp. 611, 613–616.

Keilbar appealed in forma pauperis to the Court of Appeals for the Fifth Circuit. Petitioners did not appeal. (No. 35, R. 16, 20; Transcript R. 64) [2] The circumstances leading to their decision not to appeal are alleged as follows:

On December 11, 1943, they were placed in detention as potentially dangerous enemy aliens; they had no money or property other than their home, worth at the most $2,500; the transcript and printing costs were estimated to be at least $5,000; Hans Ackermann's attorney advised him that in order to appeal in forma pauperis he and his wife would have to first sell their home and apply the proceeds to the payment of at least some of the

[2] We shall use the term "Transcript" to refer to the transcript of the denaturalization proceeding, a copy of which has been filed with the Clerk. See note 14 *infra*.

costs. Petitioners consulted the Assistant Commissioner for Alien Control, in whose custody they were, and he advised them to keep their home, and further advised them "that they were stateless, and would be released at the end of the war." In reliance on this assurance they refrained from appealing. (No. 35, R. 13–14.)

On June 12, 1944, this Court decided *Baumgartner* v. *United States,* 322 U. S. 665. Thereafter the Government, in the Keilbar appeal, stipulated that "the evidence in this case is insufficient to support the conclusions of ultimate facts and of law of the Court below" and agreed to a reversal of the judgment of denaturalization with directions to dismiss the complaint on its merits (No. 35, R. 16). The Court of Appeals entered judgment accordingly on October 2, 1944. *Keilbar* v. *United States,* 144 F. 2d 866.

On April 29, 1944, the Attorney General ordered petitioners interned and in January 1946 he ordered them removed to Germany unless they should depart voluntarily within 30 days. When their release for voluntary departure was delayed, they sought unsuccessfully to obtain their release on a petition for habeas corpus attacking the validity of their internment and the orders for their removal. No. 35, R. 14–16; *United States ex rel. Ackermann* v. *O'Rourke,* 164 F. 2d 95 (C. A. 5), certiorari denied, 334 U. S. 858.)

On March 25, 1948, petitioners filed identical motions "invoking the jurisdiction of the Court

under Rule 60 (b)" of the Federal Rules of Civil Procedure and praying that the denaturalization judgments be set aside and that the complaints be dismissed on the merits (No. 35, R. 13–17). Citing *Baumgartner* v. *United States, supra* and *Meyer* v. *United States,* 141 F.2d 825 (C. A. 5), petitioners asserted in their motions that the judgments of denaturalizations had "no valid foundation in law or in fact, being based upon erroneous conceptions of applicable law and the evidence being insufficient to support the conclusions of ultimate facts and of law," which assertion they proposed "to substantiate * * * by producing at the hearing on this motion all material evidence adduced at the trial of this case" (*id.,* 16). They further asserted that the evidence in their cases was in all substantial respects exactly the same as in the *Keilbar* case and that, had they appealed, the judgments in their cases, too, would have been reversed (*id.,* 16). Finally, they alleged that their failure to appeal was excusable because of the circumstances above set forth and that it was inequitable and unjust to give the judgments of denaturalization any prospective effect (id. 16–17).

The Government moved to dismiss petitioners' motions as insufficient "to invoke the authority of the Court to set aside" the judgments of denaturalization (No. 35, R. 17). On June 14, 1948, the District Court heard argument on the motions to dismiss. Although no evidence was

taken, the court, on its own motion, reviewed the evidence in the denaturalization proceedings. (*Id.* 20.) On September 28, 1948, the court entered the following order in each case: "The Court having considered Defendant's Motion to be Relieved from Final Judgment * * * is of the opinion that there is no merit to said motion and that the same should be denied" (id., 18; No. 36, R. 2).

On appeal these orders were affirmed. Judge Hutcheson dissented on the single ground that "the trial court erred in holding that the motion of appellant did not state sufficient grounds to invoke the authority of the court to set aside the judgment," and voted for remand to the District Court for a hearing on the merits of petitioners' motions (No. 35, R. 27; No. 36, R. 6).

SUMMARY OF ARGUMENT

Prior to the recent amendments to Rule 60 (b), Federal Rules of Civil Procedure, it was settled that relief from a final judgment could not be had merely to remedy a failure to appeal (*Scotten* v. *Littlefield,* 235 U. S. 407, 410), even where it appeared that the judgment had been decided under principles of law that were changed by subsequent decisions (*Simmons Co.* v. *Grier Bros. Co.,* 258 U. S. 82, 88). Judgments should be and were intended to be, not tentative things, but decrees having finality (*United States* v. *Kunz,* 163 F. 2d 344, 346 (C. A. 2); cf. *Sunal*

v. *Large,* 332 U. S. 174). Nothing in the amended Rule or in this Court's decision in *Klapprott* v. *United States,* 335 U. S. 601, 336 U. S. 942, was intended to affect the continuing vitality of these principles. In any event, however, petitioners have shown no intervening change of law. *Baumgartner* v. *United States,* 322 U. S. 665, and *Meyer* v. *United States,* 141 F. 2d 825 (C. A. 5), on which they rely for the asserted change, were both pending on appeal prior to the expiration of the time for petitioners' appeal; moreover, neither case purported to overrule any prior decision. And, as we shall show in Part II of this brief, neither decision would have required a different result in the present case.

Petitioners cite *Klapprott* v. *United States, supra,* as establishing that relief can always be had in exceptional cases where necessary to accomplish justice. That petitioners' case is not such an exceptional case is clearly demonstrated by comparing the allegations of their petition with those made in *Klapprott.* Klapprott was seeking relief from a default judgment entered without supporting evidence. Petitioners' judgment was entered after full trial. Klapprott alleged that he was without counsel and had no opportunity to obtain counsel; petitioners had access at all relevant times to counsel of their own choice. Klapprott alleged circumstances which a majority of this Court regarded as showing that he intended to defend the action but

was "deprived of any reasonable opportunity" to do so (335 U. S. at 613). Here, on the contrary, it is clear from petitioners' own allegations that their decision not to appeal was deliberate; after consulting their lawyer and a government official, they concluded that an appeal was not worth the money which they believed it would cost. They seek to distinguish their case from the ordinary one of a litigant who is unwilling to pay the cost of an appeal by assertion that they were misled by the statement of the government official that although they had lost their citizenship they would not be deported. Any such statement, assuming it to have been made, was necessarily a mere guess as to future governmental policy with respect to which no one could have given a binding assurance, as petitioners must have known or could easily have found out. In short, petitioners, rather than incur the cost of appeal, were willing to remain subject to possible deportation and to gamble on the hope that the power of deportation would not be exercised. A litigant who takes such a calculated risk by not appealing is not entitled to relief from his judgment if things do not turn out as he had hoped.

In any event, however, petitioners' judgments of denaturalization were correct. The district court so concluded after examination of the record of their original trial. And this Court is free so to conclude since petitioners do not seek to add to

that record, which is available to this Court. The evidence in that record covers a continuous period beginning two and one-half years before petitioners' naturalization and extending some time after it. Hence petitioners' case is totally unlike that of *Keilbar*, as to whom the same evidence related to a period beginning two years after naturalization. In petitioners' case the evidence clearly establishes their undeviating allegiance to Germany and to Hitler before, at, and after their naturalization. It leaves no doubt that their oaths of renunciation of such allegiance were false and fraudulent, and that their judgments of denaturalization were wholly proper. (*Knauer* v. *United States*, 328 U. S. 654.)

ARGUMENT

I. Petitioners' Motions To Vacate Their Judgments of Denaturalization Fail To State Adequate Grounds for Such Relief

A. The asserted change in applicable law affords no ground for vacation of the judgments

It has been well settled that relief from a judgment, by motion to vacate or otherwise, cannot be had merely to remedy a failure to submit an issue to an appellate court. *Scotten* v. *Littlefield*, 235 U. S. 407, 410; *United States* v. *Kunz*, 163 F. 2d 344, 346 (C. A. 2); *United States* v. *Borchers*, 163 F. 2d 347, 350 (C. A. 2); *Lehman Co.* v. *Appleton Co.*, 148 F. 2d 988, 989 (C. A.

7). In particular, it has been consistently held that a change in the judicial view of the applicable law affords no basis for a motion to vacate a judgment entered before announcement of the change. *Simmons Co.* v. *Grier Brothers Co.*, 258 U. S. 82, 88; *United States* v. *Kunz, supra; Lehman Co.* v. *Appleton Co., supra; Safeway Stores* v. *Coe*, 136 F. 2d 771, 773 (C. A. D. C.); *Travis County* v. *King Iron Bridge & Mfg. Co.*, 92 Fed. 690 (C. A. 5), certiorari denied, 174 U. S. 801; *Creedon* v. *Smith*, F. R. D. 162 (N. D. Ohio); *Phelan* v. *Bradbury Building Corp.*, 7 F. R. D. 429, 432–433 (S. D. N. Y.). As was recognized in *United States* v. *Kunz, supra*, and in the opinion below (No. 35, R. 24), "there must be, and there is, some finality to judgments rendered after a full and fair hearing."

Nothing in the recent amendments to Rule 60 (b) of the Federal Rules of Civil Procedure was intended to change these principles. On the contrary, the revisers' notes indicate that those amendments were addressed merely to a simplification of procedure.[3] Petitioners rely

[3] The Advisory Committee on Amendments to Rules stated (28 U. S. C. p. 3320):

"* * * The Committee has endeavored to ascertain all the remedies and types of relief heretofore available by coram nobis, coram vobis, audita querela, bill of review, or bill in the nature of a bill of review. * * * *It endeavored then to amend the rules to permit, either by motion or by independent action, the granting of various kinds of relief from judgments which were permitted in the federal courts*

on the statement of Mr. Justice Black in *Klapprott* v. *United States*, 335 U. S. 601, 614–615, that the "other reason" clause of Rule 60 (b) was intended to authorize courts "to vacate judgments whenever such action is appropriate to accomplish justice." The statement must be construed in the light of the factual situation to which it was addressed. *Klapprott* v. *United States* involved what Mr. Justice Black characterized as "an extraordinary situation" (p. 613), in which petitioners had been "deprived of any reasonable opportunity to make a defense" (pp. 613–614) in the trial court. See *infra*, Point B. As applied to such a situation, Mr. Justice Black regarded the "other reason" clause as conferring judicial discretion in exceptional cases to grant relief from a judgment without regard to the time limitations of the preceding subdivisions of the Rule and without regard to the scope of relief formerly available under the common law writs. But such a grant of judicial discretion to deal with exceptional cases presenting compelling considerations of justice and equity cannot possibly be so extended as to open the doors generally to allow relief from a judgment whenever a litigant, by hindsight, concludes

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prior to the adoption of these rules, and the amendment concludes with a provision abolishing the use of bills of review and the other common law writs referred to, and requiring the practice to be by motion or by independent action." [Emphasis ours.]

that his decision not to appeal the judgment was ill-advised.

In *Sunal* v. *Large*, 332 U. S. 174, 182, this Court dealt with a closely related question—the right to reexamine by writ of habeas corpus a criminal conviction from which the defendant failed to appeal. At the time when appeal would have had to be taken in that case, decisions of several circuit courts of appeals, including that for the Second Circuit to which appeal would have lain, were squarely contrary to petitioners' contentions. Those decisions were later overruled by this Court. Thus, concededly, the conviction was erroneous. Nevertheless this Court denied relief. Recognizing that the general rule that habeas corpus may not be used as a substitute for appeal was one of discretion and not power (332 U. S. at 180), it held that a mere change in the law on a question which could have been raised on appeal afforded no ground for relief. This Court said (at p. 182):

> It is not uncommon after a trial is ended and the time for appeal has passed to discover that a shift in the law or the impact of a new decision has given increased relevance to a point made at the trial but not pursued on appeal. * * * If in such circumstances, *habeas corpus* could be used to correct the error, the writ would become a delayed motion for a new trial, renewed from time to time as the legal climate changed. * * * Wise judicial adminis-

> tration of the federal courts counsels against such course * * *.

These considerations are surely no less applicable in a civil case. A contrary doctrine would mean that whenever this Court or a circuit court of appeals overruled or modified a prior decision, every lower court judgment entered in conformity with the earlier decision would be subject to reexamination. Under such a doctrine there would never be any finality of judgments.

But even if the rule were otherwise, the present case presents no genuine issue as to the effect on a judgment of a subsequent change in the law. Petitioners rely on *Baumgartner* v. *United States*, 322 U. S. 665, and *Meyer* v. *United States*, 141 F. 2d 825 (C. A. 5), for the asserted change in the law. Those cases were pending before this Court and before the Fifth Circuit, respectively, prior to the expiration of petitioners' time for appeal.[4] The decisions in them reiterated and applied to the particular facts there presented the rule, laid down in *Schneiderman* v. *United*

[4] The District Court's judgment of denaturalization was entered December 7, 1943 (No. 35, R. 12). Time to appeal thus expired March 7, 1944. 28 U. S. C. 230. *Schneiderman* v. *United States* was decided June 21, 1943. The *Baumgartner* case was decided by the Court of Appeals for the Eighth Circuit over the vigorous dissent of Judge Woodruff on September 11, 1943, 138 F. 2d 29. This Court granted the petition for writ of certiorari on January 17, 1944, 321 U. S. 756. *United States* v. *Meyer* was decided by the district court on February 23, 1943, 48 F. Supp. 926 (S. D. Tex.) and by the Court of Appeals for the Fifth Circuit on April 5, 1944.

States, 320 U. S. 118, that in a proceeding for denaturalization, proof on such issues as allegiance to the United States and attachment to the principles of the Constitution must be clear, unequivocal, and convincing. And they made it plain that proof limited to acts and utterances occurring some time after the date of naturalization had only slight probative force—a point also clearly anticipated in the *Schneiderman* opinions. (See 320 U. S. at 147, 171, 172.) They in no sense reversed, in terms or in effect, any prior decision of this Court or of the Court of Appeals for the Fifth Circuit. Their effect was merely to reject views which were urged by the Government and had been adopted by certain other federal courts, but on which neither this Court nor the Fifth Circuit had expressly passed.

Finally, as we shall show in Point II of this brief, nothing in those cases calls for a different result here than that reached by the trial court. On the contrary, the proof of petitioners' continuing allegiance to Germany and to Hitler is clearly, convincing and unequivocal, and rests on acts and utterances occurring over a period commencing two and one-half years before petitioners' naturalization.[5] Hence the judgments of

[5] The same was not true of petitioners co-defendant Keilbar, in whose case the Government stipulated for reversal (No. 35, R. 16). Keilbar was naturalized in 1933; petitioners in 1938. Hence, substantially all the evidence against Keilbar related to a period beginning some time after naturalization.

denaturalization are in full conformity with *Knauer* v. *United States*, 328 U. S. 654.

B. THE CIRCUMSTANCES ALLEGEDLY ATTENDING THEIR FAILURE TO APPEAL AFFORD NO GROUND FOR VACATION OF THE JUDGMENTS

Petitioners' motions to vacate allege that during the period within which they would have had to appeal petitioners were interned as enemy aliens, advised by their counsel that they could not appeal unless they sold their house and applied the proceeds toward the costs of the appeal, and advised by the Government officer who had them in custody that although they had lost their citizenship, they "were stateless and would be released at the end of the war." They rely on these allegations to establish the "extraordinary case" contemplated by this Court in *Klapprott* v. *United States, supra.*

The lack of merit in this contention is readily shown by comparing the allegations here with those in *Klapprott* v. *United States*. *Klapprott* involved a petition to vacate a default judgment of denaturalization. From the petition it appeared *inter alia* that when served with the complaint petitioner was ill and without funds; that prior to the entry of the default judgment he was arrested on a charge of violating the Selective Service Act on which his subsequent conviction was ultimately set aside by this Court; that a letter he had drafted to the Civil Liberties Union seeking legal assistance in his denaturalization

action was taken from him and never mailed; and that the lawyer appointed to defend him in the criminal case promised to help him in the denaturalization action also but failed to do so. These and other allegations, this Court held, were sufficient, if proved, to entitle him to have the judgment vacated.

The present case differs fundamentally from Klapprott's. In the first place, Klapprott's judgment was entered by default without the introduction of any evidence and hence there was no basis in the record for knowing on what legal theories the Government had proceeded or whether it could make out even a *prima facie* case.[6] Petitioners' judgment of denaturalization, on the other hand, was entered after full trial on the merits.[7] Four members of this Court thought that the mere fact that the judgment in *Klapprott* was entered by default without supporting evidence required its vacation. While a majority of this Court was not prepared to go so far, there can be no doubt that the fact that Klapprott had never had his day in court and that there was no way of telling how well-grounded

[6] Mr. Justice Black stated: "the complaint in the denaturalization proceeding strongly indicates that the Government here is proceeding on inadequate facts * * *" (335 U. S. at 615).

[7] The trial transcript, a copy of which has been filed with the Clerk of this Court, extends to 1955 pages. Petitioners' counsel conducted extensive cross-examination of the Government's witnesses and introduced voluminous evidence in their behalf.

the complaint might have been strongly influenced this Court's decision to allow him an opportunity to be heard on the allegations of his petition to vacate.

In the second place, Klapprott did not have the advice of counsel and allegedly had no opportunity to obtain counsel.[8] Petitioners, on the other hand, were fully represented by counsel of their own choice. They consulted with him with respect to taking an appeal and there is no suggestion that he declined to take an appeal or even advised against it. Indeed, the same counsel did successfully appeal on behalf of petitioners' co-defendant Keilbar and he has subsequently acted for petitioners on their unsuccessful application for habeas corpus and on the present motion.

In the third place, this Court construed Klapprott's petition as showing that he intended to defend his action but was prevented from doing so through no fault or neglect of his own. As Mr. Justice Black stated (335 U. S. at 614):

> The basis of his petition was not that he had neglected to act in his own defense, but that in jail as he was, weakened from illness, without a lawyer in the denaturalization proceedings or funds to hire one, disturbed and fully occupied in efforts to

[8] Apparently Mrs. Ackerman was content to rely on her husband's consultations with his lawyer, and did not think it necessary to consult the attorney who had represented her at the trial. There is no suggestion that her access to that attorney was in any way impaired.

> protect himself against the gravest criminal charges, he was no more able to defend himself in the New Jersey court than he would have been had he never received notice of the charges.

Similarly, Mr. Justice Frankfurter regarded Klapprott as having alleged that he "took active measures of defense which were aborted through no fault of his own" (p. 629) and held him entitled to relief only if he could "establish as a psychological fact what his allegations imply, namely that the harassing criminal proceedings against him had so preoccupied his mind that he was not guilty of negligence in failing to do more than he initially did in seeking to defend the denaturalization proceeding" (p. 631).[9]

No such circumstances are even suggested here. While it is true that petitioners were interned shortly after the entry of the district court's

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[9] On remand in the *Klapprott* case the District Court, after hearing, overruled the petition upon findings, *inter alia*, that Klapprott was in no way prevented from defending his action, that he took no steps to defend it, and that he first formulated an intention to defend it years after the event. *United States* v. *Klapprott*, 9 F. R. D. 282, affirmed, 183 F. 2d 474 (C. A. 3).

Similarly, in a number of other cases the lower federal courts have refused to set aside default judgments of denaturalization in the absence of a clear showing that the defendant was denied an opportunity to defend. *United States* v. *Borchers*, 163 F. 2d 347 (C. A. 2); *United States* v. *Willumeit* (C. A. 7), pending on petition for certiorari, No. 191; *United States* v. *Eichenlaub*, 180 F. 2d 314, certiorari denied, 339 U. S. 983; see *United States* v. *Geisler*, 174 F. 2d 992, 998 (C. A. 7).

judgment, that fact, of itself, would not prevent the taking of an appeal. "Men can press their claims from behind prison walls." *Klapprott* v. *United States*, 335 U. S., at p. 629 (Frankfurter, J.). Indeed, an appeal may be taken by the mere filing of a notice, and little, if any, personal participation by the client in the appellate proceeding is necessary. Keilbar, who was also interned,[10] had no difficulty in appealing through the same counsel as had represented petitioner Hans Ackerman. There is no suggestion that the circumstances of petitioners' internment were such as to impede their access to their counsel; on the contrary it affirmatively appears that they consulted counsel with reference to an appeal. There is no suggestion that they were in such ill health or in such a state of mental confusion as to be incapable of deciding, or allowing their counsel to decide, whether to appeal. On the contrary, their petition affirmatively shows that the decision not to appeal was made as a matter of deliberate choice.

From the petition it is apparent that the reason they did not appeal was financial. They were advised by counsel that in order to finance the costs of their appeal, they would have had to

[10] Transcript 61. The files of the Department show that Keilbar was arrested as an enemy alien on December 11, 1943, the same day as petitioners, and was not released from internment until October, 1944, after the Court of Appeals had reversed the judgment against him.

sell their house, valued at $2,500.[11] Plainly an unwillingness to spend the money necessary to an appeal cannot afford any warrant for reopening a judgment years later. Petitioners do not contend otherwise.[12]

Petitioners assert that their case is distinguishable from that of the ordinary litigant who is unwilling to pay the cost of an appeal by the fact that their decision was influenced by misleading advice allegedly given them by an official of the United States. Since this assertion is apparently the gravamen of their case, we set out in full their allegations as to it (No. 35, R. 14):

> * * * they [petitioners] sought advice from an officer of the United States of America then located at said detention station, such officer being W. F. Kelley, Assistant Commissioner for Alien Control, Immigration and Naturalization Depart-

[11] The advice may well have been wrong. *Adkins* v. *DuPont Co.*, 335 U. S. 331; but cf. *Wood* v. *Bailey*, 122 Fed. 967 (M. D. Pa.). In any event, its correctness could simply and inexpensively have been tested by filing a motion for a leave to proceed *in forma pauperis*, as was done by their co-defendant Keilbar.

[12] In their reply brief on petition for writs of certiorari, page 3, they state that their "motions were not predicated on the ground that they were *unable* to appeal because of their impecunious circumstances but, instead, did not appeal by reason of a psychological fact which was occasioned by misleading advice and assurances given them by an agent of their adversary while they were in his custody, and which misleading advice and assurances caused them to *refrain* from appealing from such judgments." [Emphasis in original.]

> ment, defendant and his wife then being in the custody of said officer and he being a person in whom they had great confidence. Said Kelley being informed with respect to the financial condition of defendant and his wife and being informed with respect to the advice of their attorney that it would be necessary for them to dispose of their home in order to appeal from said judgments, advised them in substance to "hang on to their home", and in reply to their questions with respect to what their status would be after termination of the war between the United States and Germany, told them that they had lost their American citizenship but had not reacquired their German citizenship, that they were stateless, and would be released at the end of the war. Defendant and his wife relied on such assurance from said Kelley and by reason of reliance thereon refrained from appealing from said judgments.

All this shows is that, faced with the question of taking an appeal at the cost of their house, petitioners deliberately decided that it was not worth the price. Indeed, these allegations make it abundantly clear that the only impediment to petitioners' appeal was a financial one. Their purpose in consulting Mr. Kelley was simply to obtain his advice, as a person in whose judgment they had confidence, on the question whether to invest their house in an appeal. Mr. Kelley did not mislead petitioners as to the loss of their

citizenship; he told them "they had lost their American citizenship" and they were apparently quite willing to accept that result. Their concern was evidently not as to their citizenship but as to whether they would be deported. He also allegedly advised them to "hang on to their house"—an expression of opinion of which they certainly cannot complain. And he allegedly told them, as bearing on the question whether an appeal was worth the investment, that in any event they "would be released at the end of the war." There is no suggestion that he was not giving them his opinion honestly and in good faith; he did not volunteer his advice, but gave it at petitioners' request.

In any event, it is obvious that neither Mr. Kelley nor anyone else could give a binding assurance in December 1943 as to what the policy of the United States Government with respect to enemy aliens would be at the end of a war whose outcome was then still in doubt and whose conclusion was not in sight. Mr. Kelley was merely charged with petitioners' custody, and neither held out nor authorized to commit the Government to any future action in relation to their deportation. The statement attributed to him was at most a prediction of future governmental policy over which he had no control. Had petitioners taken the trouble to consult their attorney with respect to the statement, they would doubtless have been so informed. Had they, in person

or through their attorney, taken the trouble to seek confirmation of these alleged statements from appropriate officers in Washington, they would certainly have been informed that no assurance was possible.

These circumstances cannot possibly be regarded as an interference with petitioners' opportunity to appeal, comparable to that which a majority of this Court considered to have been alleged in *Klapprott*. Petitioners had access at all times to the courts and to an attorney of their own choice. Taken in the light most favorable to petitioners, their allegations show only that they were unwilling to invest $2,500 in an attempt to save their citizenship, that their concern was not with citizenship but with the possibility of deportation, and that rather than incur the costs of an appeal they preferred to accept internment for the duration of the war and the calculated risk of allowing themselves to remain subject to deportation in the hope that the power of deportation would not be exercised. Now that events have turned out contrary to their hopes, they quite naturally regret the decision which they made. This is the basis upon which they seek to set aside a final judgment entered after a lengthy adversary trial as to the conduct of which they assign no error and in respect of which they offer no additional evidence (No. 35, R. 16). We submit that litigation would indeed be interminable if an application under Rule 60 (b)

could be granted on such a showing. Petitioners' motions are nothing more than a plea to be relieved of their voluntary and deliberate decision not to appeal. That plea is without merit. Cf. *United States* v. *Eichenlaub, supra; Klapprott* v. *United States*, 183 F. 2d 474 (C. A. 3).[13]

II. In any Event, the Original Judgments of Denaturalization Were Correct and Petitioners' Motions to Vacate Them Were Properly Denied on That Ground

In the preceding portions of this brief, we have argued that, regardless of the correctness of the original judgments of denaturalization, petitioners have made no showing entitling them to reopen those judgments. Even if they had made

[13] The present case thus bears no resemblance to cases such as *Von Moltke* v. *Gillies*, 332 U. S. 708. There Mrs. Von Moltke was allowed to challenge by petition for habeas corpus a judgment entered on her plea of guilty of espionage, where her petition alleged in effect that she had been held *incommunicado*, denied the right to counsel, and influenced by erroneous advice of an F. B. I. agent as to the applicable law of conspiracy. Four members of this Court felt that the allegation of lack of counsel, without more, entitled her to relief. Mr. Justice Frankfurter, with whom Mr. Justice Jackson joined, although resting decision on the allegation as to the erroneous advice given by the F. B. I. agent, also emphasized the lack of counsel, stating "I could not regard a plea of guilty made under such circumstances, made *without either the advice of counsel exclusively representing her* or, after a searching inquiry by the court into the understanding that lay behind it, as having been made on the necessary basis of informed self-determined choice" (332 U. S. at 728–729). [Emphasis added.]

such a showing, however, they would not be entitled to relief from the judgments unless the judgments were erroneous. We think it clear, from matters of which the district court took and this Court may take cognizance, that those judgments were entirely correct.

Petitioners' motions in the district court, after detailing the circumstances which caused them to decide not to appeal, proceeded to attack the judgments of denaturalization. Each motion in this respect set forth "that said judgment has no valid foundation in law or in fact, being based upon erroneous conceptions of applicable law and the evidence being insufficient to support the conclusions of ultimate facts and of law." This petitioners proposed to substantiate "by producing at the hearing of this motion all material evidence adduced at the trial of this case," and by citation of "pertinent authorities including, among others, the cases of *Baumgartner* v. *United States*, 322 U. S. 665, 64 S. Ct. 1240, and *Meyer* v. *United States* (C. C. A. 5), 141 F. (2d) 25." They further alleged that petitioners' cases were consolidated for trial with that of Max Herman Keilbar "and the evidence was in all substantial respects exactly the same in each case," that Keilbar appealed and the judgment against him was reversed upon stipulation of the Government, and that had petitioners appealed the judgment against them would likewise have been reversed No. 35, R. 16).

Thus petitioners' attack on their judgments rests solely on the record in the denaturalization proceeding. They make no offer of newly discovered evidence and no suggestion that for any reason that record should be supplemented. In denying their motions, the trial judge had that record before him and in fact examined it (No. 35, R. 20). His judgments dismissing the motions did so not for want of jurisdiction or for failure to comply with Rule 60 (b) but because "there is no merit to said motion" (No. 35, R. 18). Since the petitioners made no offer of proof beyond the offer to introduce the trial record, it was proper for the trial court, in disposing of the motions, to take into consideration the correctness of the original judgments of denaturalization as disclosed by the record on which these judgments were based.[14] Similarly, since all the evidence necessary to a disposition of these cases on the merits is before this Court,[15]

[14] That record was available to the Court of Appeals as one of its own records, having been filed with it on the *Keilbar* appeal. Hence there was no necessity to file a copy with that court. The Court of Appeals construed the judgment of the district court as ruling "upon the merits of the motion" (No. 35, R. 24). It apparently did not find it necessary to examine the evidence in the original denaturalization proceeding, preferring to rely on the presumption that the trial court had knowledge of that proceeding and to hold that its determination that the evidence therein was sufficient could not be attacked (No. 35, R. 25). For the convenience of this Court we have filed with the Clerk a certified copy of the record in the *Keilbar* appeal, which includes all the evidence received at the consolidated trial of petitioners and Keilbar.

[15] See note 14, *supra*.

we believe it would be entirely proper for this Court to affirm the decision on the ground that in any event the evidence in the denaturalization proceeding amply supported the judgments of denaturalization.

Petitioners' primary reliance, in support of their assertions of error in the denaturalization judgment, is on *Baumgartner* v. *United States, supra,* and *Meyer* v. *United States, supra.* The *Baumgartner* decision held that evidence of attachment and loyalty to a foreign government at a date subsequent to naturalization has little force in establishing the falsity of the earlier oath of exclusive allegiance to the United States. As this court said, 322 U. S. at page 676:

> The insufficiency of the evidence to show that Baumgartner did not renounce his allegiance to Germany in 1932 need not be labored. Whatever German political allegiance Baumgartner had in 1932, they were to Hitler and Hitlerism, certainly not to the Weimar Republic. Hitler did not come to power until after Baumgartner foreswore his allegiance to the then German nation.

And while the majority of the Court of Appeals in *Meyer* v. *United States, supra,* were dissatisfied with the quality of the evidence in that case, the main thrust of their holding was at the same point made in *Baumgartner,* a point to which the concurring judge thought the decision should be confined.

These rulings have no relevance to the cases at bar. The evidence of petitioners' real allegiance was not, as in the cited cases, of a date long after their naturalization in 1938. On the contrary, to borrow from the opinion in *Knauer* v. *United States,* 328 U. S. 654, 668, "the evidence prior to naturalization, that which clusters around that date, and that which follows in the next few years is completely consistent."[16] That evidence demonstrates overwhelmingly that before, during, and after the solemn renunciation of their allegiance to Germany petitioners nevertheless steadfastly maintained allegiance to Germany and that, accordingly, their oaths were manifestly false and fraudulent and the judgments of denaturalization proper.

The record shows that in 1926 petitioner Hans Ackermann became half owner of a German-language weekly newspaper, published in Taylor, Texas. This paper was originally the Taylor Herold. Its name was subsequently changed to Taylor Herold-Waco Post and finally to Texas Herold. In early 1938, Max Keilbar bought out the interest of Ackermann's partner, and thenceforward the paper was owned by those two. Ackermann was the publisher and Keilbar the editor. Petitioner, Frieda Ackermann, wife of Hans and sister of Keilbar, wrote for the news-

[16] As we have pointed out, *supra*, note 5, this was not true of petitioners' co-defendant Keilbar who was naturalized in 1933.

paper. (53 F. Supp. at 611, 613.) To use her own words, "* * * I had charge of the paper—the contents—did the writing and translating" (Transcript 1423).

The Government relied in the main upon petitioners' utterances through this newspaper as proof of their continuous loyalty to Hitler and Germany. Every issue from December 1935 to June 1942 was put in evidence (53 F. Supp. at 613–614). These utterances convincingly demonstrated not only petitioners' passionate devotion to Hitler and Nazi Germany, but also their conception that no German, wherever he was and whatever his citizenship, could escape the demands of this same devotion (*id.*).

Thus, on August 13, 1936, and continuously thereafter, the masthead of the paper carried the statement, "Our ancestors created us in the blood. We do not get away from it and we bear in our hearts Germanism, which is eternal and great" (53 F. Supp. at 614; Transcript 780–781, 796, 856–857, 860). We think it significant that this statement first began to appear in the year in which Hitler became absolute master of Germany.

That this was not a mere affirmation of the strength of old cultural ties, but embraced as well political programs and ideologies to which all those of German blood or extraction were deemed bound because of their German blood is plain.

The October 1, 1936, issue carried their newspaper's reply to a correspondent as follows (Transcript 858):

> We and our readers are very grateful to you for your evidence of loyalty to Germany and Hitler. We have often reported similar things to our readers, but it is good to have them mentioned from another quarter, and moreover they cannot be emphasized often enough. We in this country must consider it of importance to be oriented exactly and truthfully about Germany and its Fuehrer, for we have blood ties with those on the other side—as long as German blood flows through our veins. We German-Americans can be proud of the Germany of today and of its glorious Fuehrer, whose honor and deeds no one has been able to dispute. He is a man who knows no equal in the World. Heil Hitler!

The issue of July 8, 1937, commenting upon a letter appearing in the "New Braunsfelser Zeitung," evidently a German-language newspaper published in New Braunsfels, Texas, said in part (Transcript 1009, 1011, 1013):

> Just as J. writes in his letter: "Whoever has sworn the oath of allegiance should firmly advance and maintain the interests of his adopted country in peace or war," we say to this: "Whoever is born in Germany is also bound by a certain oath of allegiance—loyalty to his people, which every German has to maintain, no matter

where or how he lives in the world." Thereby not only are one's own interests and the racial interests advanced, but also those of the adopted country, and not last of all those of the entire world.

* * * * *

* * * If the stubborn heads would only understand that they insult Germany and the German people when they insult Hitler, for Hitler is the bearer of the thoughts and ideas of the German people, newly awakened from servitude. * * *

The newspaper carried a column entitled "Plauderei" which petitioner Freida Ackermann wrote (53 F. Supp. at 613; Transcript 714, 1621). In this column appearing in the issue of July 9, 1936, she stated (Transcript 1043–1044):

> It is the holy duty of a German always to support his mother country, and especially out in the world, for the land of origin is judged according to "such messengers".

In the issue of April 29, 1937, this column said, among other things (Transcript 1015, 1016–1017):

> * * * I am just reminded of a peculiar quotation about ideology. In it one can read about sympathy with the German people, about the honoring and protecting of German cultural heritage, about the cultivation of everything German, but in spite of all that about the rejection of German ideology! Dear Readers! Here must be a

> case of treason in its worst form, treason against one's own people and country."[17]

Under date of May 18, 1937, Mrs. Ackermann's column said in part (Transcript 1773):

> We must be mindful of our duties and repay loyalty with loyalty. To be German means to be loyal. Germany must be able to depend on its people inside and outside the frontiers of the German Reich. We Germans are a people of ninety-five millions. One-third of these people are constantly fighting for their existence outside of the frontiers of the Reich. "Many brothers are in the tumult on the edge of the German world." Whether we are now Germans of the Reich or citizens of another country, we are never released from a duty, the duty of the German.

Two months after petitioners were naturalized, the newspaper through this column was support-

[17] The article continued: "Why? There is a reason for everything! Thank God, there are still newspapers that condemn such theories. The German, no matter where in the world he lives or under what flag he should live as a citizen, cannot let be imposed upon him a one-sided ideology that is contrary to the ideology of his people. His blood does not permit this; he must at least be honest with himself, and if he is that, then he cannot reject Germany's ideology. Of what use to us are the cultural works of the German past here and over there if we guard against the new intellectual current that streams from living Germans? If we wish to live and to preserve the German language, German soul, and German spirit, then we must go with the spirit of the times, then we must not carry before us any shield of defense, but we must open heart and soul and let the new spirit move in."

ing the German-American Bund as follows (Transcript 956, 959):

> * * * Our German element realizes more and more that the Bund is right and that the Germans are really being led around by the nose.
>
> They want to force the sale of Camp Siegfried, a summer camp of the German-American Bund. That is what the battlefield hyenas want, for whom these summer camps, where German-Americans and especially German-American youths relax and cultivate German civilization, have long since been a thorn in the flesh.

The very next week the same column stated (Transcript 923):

> Conditions in the United States are reaching a point where only a man, a prudent, fearless, determined man, can regulate them. Here too will come the time and with it the hour for salvation.

The issue of August 25, 1938, was highly critical of the failure of the authorities of New Braunfels, Texas, to display the German flag at the dedication of a monument to German pioneers in Texas (Transcript 910–916). In the same issue, Mrs. Ackermann's column commented (*id.* 919):

> Pioneers! At your memorial, however, there were also standing men and women who have real ethnic character in their hearts, who perhaps know how to esteem

> your difficult beginnings more than any others, who stood gratefully, reverently, uncovered before your monument, persons who honor and love the American flag, but also esteem and love the German flag just as much * * *.

Petitioners made it a point in their issue of March 18, 1937, to deprecate a reported increase in the number of applications for American citizenship as follows (Transcript 870–871):

> If a spade were only called a spade! It is said that in the year 1936 more applications were handed in for naturalization papers than in any year since 1929. In the first place, that is as a result of the Jewish immigration, but in the second place, and to a much greater extent, it is the necessity of being a citizen in order to be able to draw old-age pension, as that is recently the situation with us in Texas. Many a one has become old and gray without ever having worried about whether he was a citizen or not. Now it has suddenly become very important.

The foregoing extracts are typical of the opinions expressed by petitioners through their newspaper during a period preceding, including, and following the year of their naturalization. In addition, petitioners in 1939 received, free of charge, steamship tickets to and from Germany, furnished by the Volkesbund Fuer Das Deutschtum Im Ausland (League for Germans Abroad),

an agency of the Germany Ministry of Propaganda and Enlightenment (53 F. Supp. at 615; Transcript 133–135); on this trip, in Kalkhorst, Germany, petitioners attended an officially arranged lecture on the methods of journalism in the Third Reich and the part that German newspapers outside of Germany could play (1) in adapting Germans to foreign conditions, (2) in forming a liaison with the Reich and counteracting adverse propaganda against the Reich (Transcript 208). Petitioner Hans Ackermann was a member of the Kyffhauser Bund[18] (53 F. Supp. at 614) and both petitioners in 1938 or 1939 entertained a group of people gathered at their home by Mr. Ackermann for the purpose of meeting G. Wilhelm Kunze, then a high official and later Bundsfuhrer of the German-American Bund, who solicited the group for membership in that organization (*id.* 615; Transcript 504–508).

This evidence, we submit, clearly demonstrates that petitioners in 1938, as well as before and after that year, maintained an unfaltering allegiance to Germany, notwithstanding their oaths of renunciation in that year. The oaths were, therefore, false and fraudulent and the trial court properly so found. The judgment of denaturalization was in consequence entirely proper. *Knauer* v. *United States*, 328 U. S. 654.

[18] For a discussion of the nature of this organization, see *United States* v. *Ritzen*, 50 F. Supp. 301, 302 (S. D. Tex.).

CONCLUSION

For the foregoing reasons the judgments below should be affirmed.

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